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July 18, 2006

VIA ECF AND FEDERAL EXPRESS

Honorable Nina Gershon
United States District Judge
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Almog v. Arab Bank, plc*, No. 04 Civ. 5564 (NG) (VVP)
Afriat-Kurtzer v. Arab Bank, plc, No. 05 Civ. 388 (NG) (VVP)

Dear Judge Gershon:

On behalf of Plaintiffs in the above-captioned cases, we write in response to Arab Bank's letter to the Court of July 7, 2006 and its argument that Judge Glasser's June 30, 2006 memorandum opinion in *Stutts v. The De Dietrich Group*, Case No. 03-CV-4058 (ILG), is somehow relevant to the Bank's outstanding motions to dismiss the *Almog* and *Afriat-Kurtzer* cases which are scheduled for oral argument before the Court on July 31, 2006. Plaintiffs have also joined in the July 14, 2006 letter submitted by Gary Osen regarding the *Stutts* opinion's impact on Plaintiffs' claims pursuant to the Antiterrorism Act.

The facts of the *Stutts* case have been well-delineated in Mr. Osen's letter to the Court. At issue for Plaintiffs in the *Almog* and *Afriat-Kurtzer* cases is the Bank's contention that the dismissal of claims asserting violations of customary international law would somehow be relevant to Plaintiffs' case. As stated in Mr. Osen's letter, the court in *Stutts* summarized the plaintiffs' theory of the chain of causation and foreseeability as follows:

What the plaintiffs essentially ask the Court to accept is that by providing letters of credit to manufacturers of chemicals, the Bank Defendants should have perceived the risk that those chemicals would be sold to Iraq; that Saddam Hussein would use those chemicals to manufacture lethal weapons; that those weapons would be stockpiled in a location that would one day be bombed by coalition forces; that the bombs would hit and detonate those weapons; that the detonation would cause the toxic emissions to be released; that those emissions would permeate the atmosphere; that the plaintiffs would be present in that atmosphere, inhale those emissions and sustain the injuries alleged. [*Stutts* Op. at * 35.]

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First, the claims alleged by the *Stutts* plaintiffs were not asserted pursuant to the Alien Tort Statute, 28 U.S.C. § 1350. The *Stutts* plaintiffs were Americans whose claims could not arise pursuant to this statute. The *Stutts* court did not state that claims arising under the Alien Tort Statute were somehow tainted or misdirected. In fact, the Court cites with approval a case arising under the Alien Tort Statute to support the argument “that theories of complicity are available under international law against corporations for civil law violations.” *Stutts*, at 24, citing *Presbyterian Church of Sudan v Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003).

Second, the *Almog* and *Afriat-Kurtzer* Plaintiffs have clearly alleged in their First Amended Complaints that the Bank provided a scheme by which it would aid and abet a campaign of genocide and crimes against humanity against both the Israeli populous and other civilian targets by facilitating stipend and/or reward payments to the families of suicide bombers and other terrorists who had perpetrated the attacks resulting in the injuries sustained by Plaintiffs in violation of the law of nations. Furthermore, Plaintiffs allege that the Bank engaged in a direct violation of the law of nations through the financing of terrorism in that the Bank’s scheme of making these stipend and/or reward payments constituted an element in the act of terrorism while also providing incentive for future terrorist attacks.

Finally, Plaintiffs’ allegations of proximate causation are not riddled with the problems inherent in the *Stutts* factual scenario. Plaintiffs here have alleged the Bank’s direct involvement in providing funds to the families of terrorists and also to the support structures of these terrorist organizations within the West Bank and Gaza Strip. In *Stutts*, the provision of lines of credit is so far removed from the detonation of facilities containing chemical weapons that proximate causation could not be proved.

In summation, though the court’s opinion in *Stutts* does dismiss plaintiffs’ claims grounded in violations of customary international law and aiding and abetting customary international law, the court made clear that such causes of actions could be sustained. Furthermore, the factual distinctions between the *Stutts* case and the *Almog* and *Afriat-Kurtzer* cases are abundantly clear in terms of Plaintiffs’ allegations of knowledge and intent as to the Bank’s provision of the stipend and/or reward system to the families of terrorists engaged in a campaign of genocide and crimes against humanity. Such clarity and proximate causation allegations were lacking in *Stutts*, and it is therefore not instructive on the issues at hand in the *Almog* and *Afriat-Kurtzer* cases.

Respectfully submitted,



Michael E. Elsner

cc: All counsel of record (attached service list via ECF and electronic mail)
Magistrate Judge Viktor V. Pohorelsky (via Federal Express)

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